TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 360.

THE ANHEUSER-BUSCH BREWING ASSOCIATION, APPELLANT,

v.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 2, 1908.

(30,299.)

(20,299.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 334.

THE ANHEUSER-BUSCH BREWING ASSOCIATION, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

No. 23254.

THE ANHEUSER-BUSCH BREWING ASSOCIATION
vs.
THE UNITED STATES.

Petition.

Filed April 25, 1903.

To the Honorable the Chief Justice and the Judges of the Court of Claims:

The claimant, The Anheuser-Busch Brewing Association, respectfully represents:

I.

That it is, and has been continuously for a period long preceding the dates hereinafter mentioned, a corporation created, organized, and doing business under the laws of the State of Missouri, engaged in the business of brewing, manufacturing, bottling, and selling fermented liquors, both for domestic consumption and for export, having its brewery and principal place of business in the city of St. Louis, in the State of Missouri.

2 II.

By section 25 of the act of Congress entitled "An act to reduce the revenue and equalize duties on imports and for other purposes," approved October 1, 1890, it is provided as follows:

"That where imported materials on which duties have been paid, are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles, a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: *Provided,* That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials shall so appear in the completed articles that the quantity or measure thereof may be asertained. *And provided further,* That the drawback on any articles allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or

3

exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

That by section 22 of the act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," which took effect on the 28th day of August, in the year 1894, the provisions of said section 25 of the act approved October 1, 1890, were enacted word for word and remained in force until the 24th day of July, in the year 1897, when, by section 30 of the act approved on that date, entitled "An act to provide revenue for the Government and to encourage the industries of the United States," they were again re-enacted word for word and are still in force.

III.

That while said acts of October 1, 1890, and August 28, 1894, and July 24, 1897, were in force and operation, the claimant herein, while engaged in the regular, ordinary, and usual course of its business aforesaid, exported from the United States a large quantity of beer brewed and manufactured by it, which exportation thereof was in bottles duly corked with corks so as to preserve the
4 beer, such corks so used therein being manufactured by the claimant, in its place of business St. Louis, Missouri, principally according to and by a secret process, the property of the claimant; and that such corks so used in the bottles in which such beer was exported were made by and through the method and process aforesaid, acting upon and using corks which had been imported from foreign countries, and on which corks duty had been paid to the United States, according to law, at the rate of fifteen cents per pound, under the provisions of paragraph 416 of the act of Congress approved July 24th 1897, they being manufactured corks over three-fourths of an inch in diameter, measured at the larger end. In the manufacture of the corks which claimant put in the bottles aforesaid, thus making the exportation of such bottled beer safe and secure, the corks so imported from foreign countries were subjected to treatment by the claimant's method and process whereby the corks underwent a change in some degree, and were given additional qualities and capabilities to such an extent that such manufactured corks when put in the bottles excluded the air and retained the beer more perfectly than by any other process known to claimant, thus making its use popular with the public and highly essential to the preservation and development of the claimant's export trade.
5 The changes which are made in the imported cork while undergoing the treatment or process which the claimant subjects it to, are those which qualify or fit the cork to perform the functions herein described when put in the mouth of a bottle containing the claimant's beer, as herein set forth.

That before corks can be used for the bottling of beer for the export trade it is absolutely essential that they pass through a process of manufacture.

That the claimant's process of manufacture, which it has long

considered necessary to the perfect using of corks for the purposes above mentioned, is as follows:

1st. The corks come to the factory after importation from foreign countries, are known as hand-cut corks, must first be assorted as to sizes, and all imperfect corks rejected.

2d. The corks then pass into other hands and are branded by machines operated by gas power.

3d. They are then thoroughly washed and cleansed.

4th. The corks are then thoroughly steamed for several hours.

5th. They are then passed to a machine by the operation
6 of which all the cork meal and other imperfections are extracted, which machine is the invention of S. Leo, and is used only by the claimant.

6th. The corks then pass into another machine, where they are again re-washed for the purpose of taking out any impurities or traces of the cork meal.

7th. The corks are then subjected to a bath in a chemical preparation intended to close all the pores and appertures from whence the cork meal is extracted, thus preventing the escape of the gases contained in the beer, which combination of chemicals or baths is a secret known only to the said Leo, and is not used except by the claimant.

8th. They are then placed in wire baskets in a drying-room where they are thoroughly dried. When dried they are soft and pliable, free from all foreign substances, perfectly air-tight, and are then fit for use in bottling beer for export.

9th. They are then taken to the building used for bottling purposes, where they are re-soaked and then placed in bottles containing beer for the export trade.

In this process ten hours is required to prepare the corks for such use; and fourteen men are employed in this department alone, three of them being men thoroughly skilled in their trade. The
7 total cost of treating said corks as above described by the claimant is not less than from twenty to twenty-five dollars per day.

The cork, in being made by the claimant a part of the bottle or package to be exported, is completely destroyed so far as other future use is concerned, there being no use for it afterwards, for the cork not only undergoes a change before it is made fit for use by the claimant as above described, but in being used thus it is made an actual part of the bottle or package to be exported, and is rendered useless thereby for any other purpose.

In the manufacture of beer for export to other countries it becomes necessary to destroy the yeast in the beer to prevent second fermentation and consequent ruin of the beer. In order to destroy the germs of yeast the finished beer must be steamed to the degree necessary to destroy the germs, and for that purpose the beer must be enclosed securely in a vessel to prevent the escape of the carbonic acid gas, and of all such vessels a bottle made of glass is the one best adapted to the purpose aforesaid. And such steaming is also necessary to the perfect manufacture of beer for bottling, and to the per-

fect corking thereof it is essential and necessary that the manufactured cork should be used as herein described, and without such use of such cork the perfect manufacture of bottled beer would not be possible.

8 The beer, after having been subjected to the process of steaming, is materially different from the beer before being subjected to that process, and in order to create such different article of beer a closed glass bottle is indispensable, and the bottles and corks forming portions of the complete manufactured article known as "bottled beer" are, as well as the hops and barley entering into the same, a necessary component part of the article when completed and in a condition ready for export. It was such bottles filled with such beer that the claimant stopped or corked with the corks made as hereinbefore described.

IV.

Under section 3019 of the Revised Statutes of the United States, which is a provision similar but not identical in terms with the provisions of the acts of 1890, 1894, and 1897 herein cited, it was ruled by the Treasury Department, under date of March 31, 1886, that "on the exportation of beer manufactured wholly of imported materials, bottled in imported bottles and corked with imported corks, a drawback will be allowed for the hops, rice, and barley used in the manufacture at the rate prescribed by the Department's letter to you on the 25th instant, and for the bottles and corks at the rate

9 of duty paid thereon, less the legal retention of 10 per cent."; and in the official table of drawback rates prescribed by the Secretary of the Treasury under date of August 17, 1886, bottles and corks used in bottling beer were specifically named as entitled to the benefit of drawback rates to the full amount of the duty paid, less 10 per cent. This remained in force until the 28th day of October, in the year 1890, when, under the tariff act of October 1, 1890, it was ruled that "imported bottles used in the bottling of fermented liquors made in the United States, wholly from domestic grain and hops, are not entitled, on the exportation of such bottled beer, to drawback under the provisions of Section 25 of the act of October 1, 1890." But notwithstanding this ruling, drawback continued to be allowed and paid on bottles and corks used in the bottling of fermented liquors made in the United States from foreign grain and hops, as well as upon such grain and hops themselves, until the 24th day of March, 1893, when, by a further ruling of the Treasury Department, all earlier decisions authorizing the allowance of drawback on imported bottles, corks, and tinfoil used in bottling beer for export were rescinded and set aside, and from and after the date of said last-mentioned decision the Treasury Department has refused to allow any drawback whatever on bottles, corks, or tinfoil used in

10 the manufacture of bottled beer for export, irrespective of the question whether the hops and barley used in the manufacture of such beer were of foreign or domestic origin.

V.

The claimant herein, relying upon the law and upon the earlier decisions of the Treasury Department thereunder, purchased from time to time large quantities of corks for use in the manufacture of bottled beer for the export trade, according to the method and secret process hereinbefore mentioned, on all of which the duties imposed by law were paid at the time of their importation, and the same were used in the manner hereinbefore described in the manufacture of bottled beer for the export trade, and such beer was thereupon exported to foreign ports in different quarters of the globe.

The claimant duly entered the same at the custom-house at the port of St. Louis, in the State of Missouri, for exportation for the benefit of drawback, and made proof to the satisfaction of the collector of said port of the foreign origin of said corks so used as aforesaid, and of the payment of duties thereon and the amount thereof, and of the fact that the same had been used in the manufacture of bottled beer as hereinbefore set forth, and it otherwise com-
11 plied with the law and the regulations as prescribed by the Secretary of the Treasury for the establishment of the right to drawback. But the collector of the port, acting under and in obedience to the decisions of the Treasury Department, refused to allow the drawback on the corks, and when the claimant applied to the Secretary of the Treasury for allowance of drawback under the provisions of section 30 of the Act of July 24, 1897, the department denied the application under date of December 9, 1898, and so notified the surveyor of customs at the port of St. Louis, before and since which time the customs officers at that port have failed and refused to allow claimant drawback on the corks used by the claimant in the exportation of its bottled beer.

VI.

On the entries so made for exportation of bottled beer, which bottles were corked exclusively with corks manufactured from the corks of foreign importation as aforesaid, the total amount of drawback due the claimant from the 24th day of July, 1897, to this time is, to-wit, twenty-seven thousand dollars, which amount the claimant here demands, but reserves the right to amend as to dates and amounts if so advised.

No other action than as aforesaid has been had on this claim in any of the departments, or in the Congress or the courts of the United States.

12 VII.

The claimant is the sole owner of this claim, and no other person or corporation has any interest therein; and no assignment or transfer of the claim, or of any part thereof, or interest therein, has been made.

VIII.

The claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets. The

claimant is a citizen of the United States and has at all times borne true allegiance to the Government thereof, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and it believes the facts as stated in this petition to be true.

Wherefore the claimant asks judgment for twenty-seven thousand dollars.

THE ANHEUSER-BUSCH BREWING ASSOCIATION,
By AUG. A. BUSCH, *Its Vice-President.*
DUDLEY & MICHENER,
Attorneys of Record.
FINKELNBURG, NAGEL & KIRBY,
Counsel.

13 STATE OF MISSOURI, *City of St. Louis, ss:*

August A. Busch, of lawful age, being duly sworn, deposes and says that he is the Vice-President of the Anheuser-Busch Brewing Association; that he has read the foregoing petition, and that the statements therein made are true in substance and in fact as he is informed and verily believes.

AUG. A. BUSCH.

Subscribed and sworn to before me this 17th day of April, A. D. 1903.

[SEAL.] GUSTAV F. DECKER,
Notary Public.

14 II.—*Traverse. Filed April* 10, 1906.

In the Court of Claims of the United States.

Term, A. D. 1905-'6.

No. 23254.

THE ANHEUSER-BUSCH BREWING COMPANY
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

J. A. VAN ORSDEL,
Assistant Attorney General.

15 III.—*Argument and Submission of Case.*

This cause was argued by Mr. Louis T. Michener for the claimant and Mr. Assistant Attorney General J. A. Van Orsdel for the defendants on the 10th and 11th days of April 1906 and submitted.

16 IV.—*Findings of Fact and Conclusion of Law. Filed May 7, 1906.*

THE ANHEUSER-BUSCH BREWING COMPANY
v.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

Plaintiff is, and has been continuously for a period long preceding the dates hereinafter mentioned, a corporation created, organized, and doing business under the laws of the State of Missouri, engaged in the business of brewing, manufacturing, bottling, and selling fermented liquors, both for domestic consumption and for export, having its brewery and principal place of business in the city of St. Louis, in the State of Missouri.

II.

By section 25 of the act of Congress entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1890 (26 Stat., 617), it is provided as follows:

"That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: *Provided,* That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further,* That the drawback on any articles allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties
17 paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and

their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

By section 22 of the act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," which took effect on the 28th day of August, 1894 (28 Stat., 551), the provisions of said section 25 of the act approved October 1, 1890, were enacted word for word and remained in force until the 24th day of July, 1897 (30 Stat., 211), when, by section 30 of the act approved on that date, entitled "An act to provide revenue for the Government and to encourage the industries of the United States," they were again reenacted word for word and are still in force.

III.

That while said acts of October 1, 1890, and August 28, 1894, and July 24, 1897, were in force and operation the claimant herein, being engaged in the regular, ordinary, and usual course of its business aforesaid, exported from the United States a large quantity of beer brewed and manufactured by it, which exportation thereof was in bottles duly corked by it with corks so as to preserve the beer; that such corks so used by it in the bottles in which such beer was exported were imported from Spain, a foreign country (and on which corks duty had been paid to the United States, according to law, at the rate of 15 cents per pound, under the provisions of paragraph 416 of the act of Congress approved July 24, 1897), they being corks over three-fourths of an inch in diameter, measured at the larger end. The corks so imported from Spain were subjected to treatment by claimant.

The corks so used by the claimant in the making and shipment of its export beer were corks imported into this country from Spain, where they were cut by hand, without steaming. After these corks were received by claimant in its brewery in St. Louis, and while in the same state in which they were imported from Spain, they were carefully examined and all that were not fit for use in the export trade were rejected. The good ones were then selected and assorted according to sizes, and were branded with the date, the name of the brewer, the name of the beer, and a special private mark to show what firm the cork came from. All this was done by unskilled labor.

The selected corks were put into a machine, or air fan, the unpatented invention of a man in the employ of the claimant, and all dust, meal, bugs, and worms were removed therefrom. They were then thoroughly cleansed by washing and steaming, removing the tannin and germs and making the corks soft and elastic, and they were next exposed to blasts of air in a machine, the unpatented invention of the same employee, until they were absolutely dry.

Following this, they were put for a few seconds into a bath of glycerine and alcohol, the proportions of which are a trade secret

which the claimant has the right to use, and then they were dried by a special system. This bath closed up all the seams, holes
18 and crevices, and gave the corks a coating which prevented the beer from acquiring a cork taste. The corks were then dried by absorption of the chemicals that had covered them. If the corks had been used without the application of this chemical bath, the beer would have acquired a taste of cork which would have injured the market for it.

The whole process took from one day to three days, the longest part of it being the drying after the chemical bath.

The bath made it easier to put the cork into the bottle and take it out. The pores and apertures of the cork were thoroughly closed by the bath, and thus the escape of the gases contained in the beer was prevented.

The steaming of the corks, or pasteurizing them, destroyed all the germs in them that would damage or spoil the beer, if they were not pasteurized. This pasteurizing also destroyed the yeast that might have been in the beer.

If the corks had but little or no elasticity, and did not fit the bottles perfectly, the gas would escape while the beer was yet in the brewery, or in transportation, or in the place of market, and the beer would be flat, stale, worthless, and unmarketable.

When the corks had been dried, they were soft, elastic and pliable, free from all foreign substances and germs, perfectly air-tight, and fitted for use in bottling beer for export. They were next taken to the building in claimant's brewery which was used for bottling purposes, where they were again soaked or wetted by steaming them for a short time, so they would fit snugly and easily in the bottles.

The bathing, or treatment by the bath, and the washing and steaming of the corks were all done by skilled labor.

After the beer had been put in the bottles and they had been corked, the filled bottles were put in a large vat, where they were pasteurized by heating to the right temperature for a sufficient length of time and cooled again. If the corks had not been treated as above described, the carbonic-acid gas would have escaped in the heating or pasteurizing process, because there was a powerful gas pressure toward the cork during all that process. If that gas had escaped, the beer would have become flat.

The corks, so treated by this process and put in the bottles of beer, could only be removed therefrom by means of a corkscrew or other instrument of force, which removal would damage or destroy the cork so it could not be used afterwards for the same purpose.

The hand-cut corks which come from Spain have all been cut out of the wood without steaming it beforehand. The corks that are cut in the United States are cut from the wood that has been steamed first, thus depriving them of much of their elasticity. Because the Spanish hand-cut corks are cut without having been steamed in the first instance, they are far safer and better corks to be made for and used in bottling export beer than corks cut in the United States after being steamed.

Without the careful selection and thorough treatment of corks,

beer can not with safety be exported from the United States to foreign countries.

When the corkwood reaches the United States it is steamed in order to get an increase volume out of it. The steaming of the cork-wood makes it open something like a sponge. The steaming swells the cork, and those who do the steaming get more corks out of it,
19 but how much more does not appear. But the steaming takes away its elasticity, and the cork cut after steaming is not so good or so perfect as one cut from the dry wood in the first place.

Corks cut after steaming will shrink, and that fact makes them inferior corks. Cork dealers in the United States also put it through various treatments, such as polishing it and using chemicals to make it look bright and have a good color. They do not attempt to close up the pores in the cork, nor run it through machinery to shake or wash the dust or impurities out of it. They put the cork on the market as the machine cuts it after it has been steamed. Corks so cut and treated in the United States would not be fit for use in the exportation of beer, for they would damage the beer through contact, and much stale beer would result from the escape of the carbonic-acid gas by reason of the imperfect corking, and the beer would not be marketable.

In the manufacture of beer for export to other countries it was necessary to destroy the yeast in the beer to prevent second fermentation and the consequent ruin of the beer. In order to destroy the germs of yeast the finished beer was steamed to the degree necessary to destroy the germs, and for that purpose the beer was inclosed securely in a vessel to prevent the escape of the carbonic acid gas, and of all such vessels a bottle made of glass was and is the one best adapted to the purpose aforesaid. And such steaming was also necessary to the perfect manufacture of beer for bottling, and to the perfect corking therof it was essential and necessary that the cork as treated should be used as herein described.

IV.

The claimant herein, relying upon the law and upon the earlier decisions of the Treasury Department thereunder, purchased from time to time large quantities of Spanish corks for use in the manufacture of bottled beer for the export trade, according to the method and process hereinbefore mentioned, on all of which the duties imposed by law were paid at the time of their importation, and 73,299.78 pounds of the same were used in the manner hereinbefore described, in the manufacture of bottled beer for the export trade, and such beer, after being put in bottles so corked with the corks before described, was thereupon exported to foreign ports in different quarters of the globe.

The claimant duly entered the same at the custom-house at the port of St. Louis, in the State of Missouri, for exportation for the benefit of drawback, and made proof to the satisfaction of the collector of said port of the importation of said corks so used as aforesaid, and of the payment of duties thereon and the amount thereof, and of the fact that 73,299.78 pounds of the same had been used in

e manufacture of bottled beer, as hereinbefore set forth, and it herwise complied with the law and the regulation as prescribed by e Secretary of the Treasury for the establishment of the right to awback. But the collector of the port, acting under and in edience to the decision, of the Treasury Department, refused to ow the drawback on the corks aforesaid, and when the claimant plied to the Secretary of the Treasury for allowance of drawback under the provisions of section 30 of the act of July 24, 1897, the Department denied the application under date of December 9, 1898, and so notified the surveyor of customs at the rt of St. Louis, before and since which time the customs officers at at port have failed and refused to allow claimant drawback on the rks used by the claimant in the exportation of its bottled beer.

V.

On the entries so made for exportation of bottled beer, which bot- s were corked exclusively as shown by the preceding findings, the al amount of drawback due the claimant from the 24th day of ly, 1897, to April 17, 1903, is $10,995, being at the rate of 15 nts per pound for 73,299.78 pounds, as before stated.

No other action than as aforesaid has been had on this claim in y of the Departments, or in the Congress or the courts of the ited States.

VI.

The claimant is the sole owner of this claim, and no other person corporation has any interest therein; and no assignment or trans- of the claim, or of any part thereof, or interest therein, has been de.

Conclusion of Law.

Upon the foregoing findings of fact, the court decides, as a conclu- n of law, that the petition be, and the same is hereby, dismissed.

V.—*Opinion of the Court.*

HOWRY, J., delivered the opinion of the court:

Plaintiff company is engaged at St. Louis, Mo., in the business of wing and bottling beer for domestic consumption and export. It ngs this action under the general jurisdiction of the court for awback authorized to be paid under section 30 of an act approved y 24, 1897 (30 Stats. L., 211, re-enacting similar previous tutes), for $27,000 as amounts paid by it as duties for imported k used in the export of its bottled beer, but claimed to be so anged by treatment as to be manufactured cork in this country er its importation from abroad.

The court is indebted to the learned counsel on both sides for the l and able presentation of everything calculated to make clear the ues. But since two recent cases in this court, pertaining to claims drawback, were affirmed on appeal it is unnecessary to review

the many decisions to which we are referred defining manufacturing but rather to give the results deduced from an examination of these cases as well as an examination of the statute under which the drawback is claimed.

Plaintiff imports cork from Spain and then treats it as set forth in the findings. After all the explanation the process is simple. Selected corks, after being branded, are put into what the proof shows to be a machine or air fan, which is an unpatented invention, and all dust, meal, bugs, and worms removed. The corks are then thoroughly cleaned and washed by steaming, which removes the tannin and germs and makes them soft and elastic, and then are again exposed to blasts of air in the unpatented machine until dry. Following this they are put for a few seconds into a bath of glycerin and alcohol, the proportions of which are a trade secret, and then dried by what is generally stated to be a special system, the nature of which is not shown. This bath closes up the seams and crevices, when the corks receive a coating to prevent the beer from acquiring a cork taste. The corks are then dried by absorption of
22 the chemicals covering them. The bath makes it easier to put the cork into the bottle and take it out, and the steaming of the corks destroys any germs that may be in them that would damage or spoil the beer if not sterilized.

In Tide Water Oil Co. (31 C. Cls. R., 90; 33 *ibid.*, 514; 171 U. S., 210) the court of last resort in affirming this court has shown how raw materials may be subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product. "Ordinarily," the court said, "the article so manufactured takes a different form, or at least subserves a different purpose from the original materials, and usually it is given a different name." The illustrations given of logs first manufactured into boards, planks, joists, and scantlings, and then by different processes fashioned into boxes, furniture, doors, windows, sashes, and trimmings, manufactured wholly or in part of wood, and of the steel springs of a watch made from iron ore and by a number of processes or transformations called distinct processes of manufacture receiving a different name are in point as to what constitutes manufacturing. Underlying these specific illustrations and a general statement relating to what is the ultimate product of successive steps necessary to make a manufactured product, is the idea that the process is supposed to produce some new article by the application of skill and labor to raw materials.

The mere cleaning of Spanish cork by washing and steaming, so as to remove the tannin and germs and to make the corks soft and elastic, certainly does not produce a new article. The few seconds' bath of glycerin and alcohol to which the corks are subjected, as shown here, may give a coating so as to prevent beer from acquiring a cork taste, and this application may close up the crevices in the corks, but anybody can be called a cork manufacturer, if that is all to be done, as there is no skill applied to make the thing over. Certainly there is nothing in washing and steaming imported cork and in soaking the imported material in glycerin and alcohol (no matter

in what proportion) that changes the imported cork into manufactured cork. The chemical change that should be wrought in the imported article to make the article manufactured by the washing and steaming and then applying glycerin and alcohol certainly does not take the imported stuff very far away from its natural form. It is, apparently, not new. Like imported shells (Hartranft *v.* Wiegmann, 121 U. S., 609), where the outer layer of the shell is cleaned by acid and the second layer is ground by an emery wheel, the corks so treated do not seem to be any more manufactured than shells treated with acid and rubbed. They are still corks, having a distinctive name and character and use as cork. If the application of glycerin and alcohol be in such proportions as to make this application a trade secret, equally can it not be controverted that cork has been as effectually treated everywhere by means employed to prevent the escape of bottled carbonic acid gas? This does not constitute manufacture nor make persons steaming and washing cork and applying glycerin and alcohol (in any kind of proportion) manufacturers.

But it is shown that the corks are put into a machine or air fan to remove dust, meal, bugs, and worms. How effectually this is done or can be done, or how different from the means taken by others who bottle beer or other effervescing liquid, does not appear. It
23 does appear that the company puts the corks it uses to bottle export beer into what it proves and the finding shows to be an air fan. But this air fan, called a machine, is an unpatented something not shown to the court, nor is there any description given either of the machine or how it can remove any substance contained in the imported cork. Without a description of the unpatented fan and without some means of knowing what is accomplished by its use, we can not assume that the cork is treated by this company materially different from cork treated by any other company or person along the same lines or different lines. In neither case is it clear that the cork undergoes any material change, so that it can not be said to be an article manufactured in this country.

If the process described by plaintiff in the use of what they say is a machine accomplishes results so valuable, we do not think there would be much delay in applying for and obtaining a patent upon it. We do not mean to say that it may not have some effect upon the cork, because we have accepted its statement that it has. At the same time we are unable to see that, after all the treatment given to the imported article, it is converted into an article manufactured in this country.

The difficulty with plaintiff's case is that when through treating the cork the finished character of the product is not apparent. The line of demarkation in an unfinished article and an article so finished as to make the thing treated a manufactured article is not always easy of distinction. We are not, however, able to say that this company manufactures cork any more than we can say that shooks imported to be used in the manufacture of boxes are materials within the intent of the statute (171 U. S., *supra*); or that the cork treated by plaintiff is in any better position as the basis of a claim for draw-

back than bituminous coal imported but consumed as fuel in this country (163 U. S., 499). Neither possesses the right to a drawback.

Foregoing considerations are sufficient to disallow the claim, because in case of doubt as to the interpretation of the statute the construction must be resolved in favor of the Government. (Swan & Finch Co., 190 U. S., 143.)

The other defense that the corks in question were not a part or ingredient of the beer exported and consequently not, in contemplation of law, exported at all need not be more than briefly considered.

In Schlitz Brewing Company (35 C. Cls. R., 110; 36 *ibid.*, 580; 181 U. S., 584) it is held that bottles and cork in which beer is bottled and exported for sale though brought from abroad are not imported materials used in the manufacture of such beer within the meaning of the drawback provisions of the customs-revenue laws. Plaintiff contends that the case at bar is dissimilar to that case because here manufacture is shown while there manufacture did not appear. But that case did include the claim for drawback of duties upon imported bottles and corks, and while it is true that the particular treatment of the corks imported shown here does not appear there, the court did say that bottles and corks were not imported materials at all but finished products and usable for any liquor which the importer might choose to put in bottles. Such materials were "simply packages which the manufacturer (of beer) for purposes of export, sees fit and perhaps is required to make use of for the proper preservation of his product." It is the beer manu-
24 factured that is exported for foreign competition. Certainly the manufacture of the beer for export is alone the object of the plaintiff's business.

The use of corks to bottle the beer is a necessary part of the business, it is true, just as the use of the bottles is an essential part. But cork manufacturing in such case, if it be manufacturing is but the incident of the trade. The corks are washed, steamed, cleaned, fanned, and then dried; not to sell but to put in bottles of beer for exportation. The beer is manufactured, bottled, and corked for export and use. The object of the drawback law was to build up an export trade and encourage manufactures in this country where such manufactures are intended for exportation by granting a rebate of duties upon the raw or prepared materials imported, and thus enabling the manufacturer to compete in foreign markets with the same articles manufactured in other countries. Tide Water Oil Company case (*supra*), so declares, and further that "in determining whether the articles in question were wholly manufactured in the United States, this object should be borne steadily in mind." So far as this record discloses, and so far as we have any knowledge of the subject, plaintiff is not competing in foreign markets in exporting the corks which hold its beer, because the corks are not sold as corks abroad. So, if this company has otherwise made out its case as to the claim of cork manufacture in this country, the method shown of treating and incidentally using the imported cork would hardly be

said to encourage manufacture in this country within the meaning of the customs-revenue laws.

Petition dismissed.

25 VI.—*Judgment of the Court.*

THE ANHEUSER-BUSCH BREWING ASSOCIATION
v.
UNITED STATES.

At a Court of Claims held in the City of Washington on the 7th day of May 1906, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendants, and do order, adjudge and decree that the petition of the claimant, The Anheuser-Busch Brewing Association, be and the same is hereby dismissed.

BY THE COURT.

26 VII.—*Application for and Allowance of Appeal.*

No. 23254.

THE ANHEUSER-BUSCH BREWING ASSOCIATION
vs.
THE UNITED STATES.

Comes now the claimant and makes application for the allowance of an appeal to the Supreme Court of the United States from the judgment heretofore rendered by this Court in the above entitled case.

DUDLEY & MICHENER,
Attorneys for Claimant.

Filed May 28, 1906.

Ordered:

That the appeal in the above-entitled cause be allowed as prayed for.

BY THE COURT.

May 28, 1906.

27 Court of Claims.

No. 23254.

THE ANHEUSER-BUSCH BREWING ASSOCIATION
vs.
UNITED STATES.

I, John Randolph, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-enti-

tled cause; of the findings of fact and conclusion of law; of the opinion of the Court; of the judgment of the Court; of the application for, and allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 25th day of June 1906.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

Endorsed on cover: File No. 20,299. Court of claims. Term No. 334. The Anheuser-Busch Brewing Association, appellant, *vs.* The United States. Filed July 2d, 1906. File No. 20,299.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THE ANHEUSER-BUSCH BREWING ASSOCIATION, *Appellant*,

v.

THE UNITED STATES.

No. 60.

APPELLANT'S BRIEF.

I.

ASSIGNMENT OF ERRORS.

The Court of Claims erred:

1. In dismissing the petition.

2. In not rendering judgment in favor of the appellant in the sum of $10,995.00.

II.

THE PLEADINGS.

Appellant filed its action against the United States in the Court below for $27,000, as the amount of "drawback"

due it on payment of duties to the United States on imported cork used thereafter in the export of its manufactured and bottled beer. The cork was so changed as to be cork manufactured in this country after its importation from Spain and before its exportation. Sec. 30, Act of July 24, 1897 (30 Stat. 211).

For petition see Rec. 1–6. The government filed the usual general denial (Rec. 6).

III.

Jurisdiction.

This action is for "drawback" and the court below had jurisdiction.

Campbell's case, 107 U. S. 407.

Schlitz case, 181 U. S. 584.

IV.

The Facts.

The court below found the facts at length and substantially as alleged in the petition (Rec. 7–11). In finding V, Rec. 11, it is found that the amount due appellant on payments made from July 24, 1897, to April 17, 1903, was $10,995.00. The facts are so clearly and concisely stated in findings III and IV, that we shall not try to summarize them here further than to say that the entire process of manufacture is elaborately set forth in the third finding. The cork was cut in Spain while in its crude state, and then imported to the United States, where it was first assorted into sizes, the imperfect corks rejected and the perfect ones put through mechanical and chemical operations and treatments which washed, cleansed and purified them, and in every way fitted them for use in bottles containing beer to be exported to foreign

countries. In doing all this, labor, care, skill, mechanical implements, secret processes and chemical treatments were necessarily used. The result was a product of corks fitted in every way for use in the exportation of beer.

Without the use of corks duly selected and treated by the process described in that finding, or by a process equivalent to it, appellant's beer could not have been exported to foreign countries.

V.

The Judgment.

The court adjudged that the petition be dismissed (Rec. 15). That judgment is preceded in the record by the opinion of the court (Rec. 11–15).

VI.

The Statutes.

By section 25 of the act of Congress entitled "An act to reduce the revenue and equalize duties on imports and for other purposes," approved October 1, 1890 (26 Stat. 617), it is provided as follows:

> "That where imported materials on which duties have been paid, are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles, a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained. *And provided further*, That the drawback on any articles allowed under existing law

shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

By section 22 of the act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," which took effect on the 28th day of August, 1894 (28 Stat. 551), the provisions of said section 25 of the act approved October 1, 1890, were enacted word for word and remained in force until the 24th day of July, 1897 (30 Stat. 211), when, by section 30 of the act approved on that date, entitled "An act to provide revenue for the Government and to encourage the industries of the United States," they were again re-enacted word for word and are still in force. Finding II, Rec. 7, 8.

VII.

Departmental Interpretation.

Under section 3019, Revised Statutes, which is a provision similar to but not identical in terms with the provisions of the acts of 1890, 1894, and 1897, it was ruled by the Treasury Department, under date of March 31, 1886, that " on the exportation of beer manufactured

wholly of imported materials, bottled in imported bottles and corked with imported corks, a drawback will be allowed for the hops, rice, and barley used in the manufacture at the rate prescribed by the Department's letter to you on the 25th instant, and for the bottles and corks at the rate of duty paid thereon, less the legal retention of 10 per cent.

And in the official table of drawback rates prescribed by the Secretary of the Treasury under date of August 17, 1886, bottles and corks used in bottling beer were specifically named as entitled to the benefit of drawback rates to the full amount of the duty paid less 10 per cent. This remained in force until the 28th day of October, 1890, when, under the tariff act of October 1, 1890, it was ruled that "imported bottles used in the bottling of fermented liquors made in the United States, wholly from domestic grain and hops, are not entitled, on the exportation of such bottled beer, to drawback under the provisions of Section 25 of the act of October 1, 1890."

Notwithstanding that ruling drawback continued to be allowed and paid on bottles and corks used in the bottling of fermented liquors made in the United States from foreign grain and hops, as well as upon such grain and hops themselves, until the 24th day of March, 1893, when, by a further ruling of the Treasury Department, all earlier decisions authorizing the allowance of drawback on imported bottles, corks, and tinfoil used in bottling beer for export were rescinded and set aside, and from and after the date of said last-mentioned decision the Treasury Department has refused to allow any drawback whatever on bottles, corks, or tinfoil used in the manufacture of bottled beer for export, irrespective of the question whether the hops and barley used in the manufacture of such beer were of foreign or domestic origin.

See *Schlitz Brewing Co. case*, 35 C. Cls. 110–113, and Treasury Decisions and 181 U. S., 584, 587.

The departmental action has been first one way and then another. Drawback was allowed on corks from March 31, 1886, to March 24, 1893, and since then it has been denied.

VIII.

Law of the Case.

Section 25 of the act of October 1, 1890 (26 Stat. 617), is quoted in full in the second request. That section was re-enacted, word for word, in section 22 of the act of August 28, 1894(28 Stat. 551). The latter act still remains in force, for it was re-enacted as section 30 of the act of July 24, 1897 (30 Stat. 211).

The statute uses the words "imported materials," "manufactured or produced," "manufacture or production," and "manufacturer, producer or exporter." We submit that the case turns on the meaning of the words "manufacture" and "manufactured." The other words of the statute, so far as this case is concerned, depend upon the meaning of the words "manufacture" and "manufactured."

This court has sanctioned the use of dictionary definitions in determining the meaning of words in tariff laws.

Marvel v. *Merritt*, 116 U. S. 11, 12.

Nix v. *Hedden*, 149 U. S. 304.

Therefore we shall make use of such definitions in this argument.

1. Mr. Brande defines "manufacture" as a term employed to designate the changes or modifications made by art or industry in the form or substance of material articles with a view of rendering them capable of satis-

fying some want or desire of man, and "manufacturing industry" to consist in the application of art, science, or labor to bring about certain changes or modifications of already existing materials. He includes under the term "manufacture" all branches of industry, with the exceptions of fishing, hunting, mining, and such industries as have for their object to obtain possession of material products in the state in which they are fashioned by nature. He says that the term is generally applied only to those departments of industry in which the raw materials are fashioned into desirable articles by art or labor without the aid of the soil, but that there is no real good reason for such limitation, and that it is obvious from the slightest consideration that agriculture is nothing but a manufacture, for the business of the agriculturalist is to dispose of the soil, seed, manure, or other materials, that they may supply him with other and more desirable products.

Brande's Enc., tit. "*Manufacture.*"

Evening Journal Ass'n v. *State Board of Assessors*, 47 N. J. Law (18 Vroom), 36, 38.

"Manufacture" is defined by Worcester to be "the process of making anything by art, or of reducing materials into forms fit for use by hand or by machinery, as an establishment for the manufacture of cloth; anything made or manufactured by hand, or manual dexterity, or by machinery." As a verb it is defined to mean, to form by manufacture or workmanship by hand or by machinery; to make by art or labor.

Approved and applied in—

Attorney-General v. *Lorman*, 59 *Mich.* 157.

Louisville & N. R. Co. v. *Fulghan*, 91 Ala. 555.

Beggs v. *Edison Elec. Ill. Co.*, 96 Ala. 295.

Lamborn v. *Bell*, 18 Colo. 346.

Bouvier says the word "manufacture" "includes any new combination of old materials constituting a new result or production, in the form of a vendible article, not being machinery."

Quoted with approval in *Murphy* v. *Arnson*, 96 U. S. 131, 134.

The primary meaning of the word "manufacture" is something made by hand, as distinguished from a natural growth; but as machinery has largely supplanted this primitive method, the word is now ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. Ordinarily the article so manufactured takes a different form, or at least subserves a different purpose, from the original materials, and usually it is given a different name. Raw materials may be, and often are, subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product. Thus, logs are first manufactured into boards, planks, joists, scantlings, etc., and they by entirely different processes are fashioned into boxes, furniture, doors, windows, sashes, trimmings, and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but by a large number of processes or transformations, each successive step in which is a distinct process of manufacture, and for which the aticle so manufactured receives a different name.

Tidewater Oil Co. v. *United States*, 171 U. S. 210.

While, from its derivation, the primary meaning of the word "manufacture" is making with the hand, this definition is too narrow for its present use. Its meaning has extended as workmanship and art have advanced, so that

now nearly all artificial products of human industry, nearly all such materials as have acquired changed conditions or new and specific combinations, whether from the direct action of the human hand, from chemical processes devised and directed by human skill, or by the employment of machinery, which, after all, is but a higher form of the small implements with which the human hand fashioned its creations in ruder ages, are now commonly designated as manufactures. Thus a flour mill driven by steam and furnished with the necessary machinery is a manufacturing establishment.

Carlin v. *Western Assur. Co., of Toronto*, 57 Md. 515, 526; 40 Am. Rep. 440.

2. "Manufacturing" is the making of a thing, and to make, in the mechanical sense, does not signify to create out of nothing, for that surpasses all human power. It does not often mean the production of a new article out of materials entirely raw. It generally consists in giving new shapes, new qualities, or new combinations to the matter which has already gone through some other artificial process. Thus a cunning worker in metals is the maker of the ware he fashions, though he did not dig the ore from the earth, or carry it through every subsequent stage of refinement. A shoemaker is none the less a manufacturer of shoes because he does not also tan the leather.

Norris v. *Commonwealth*, 27 Pa. (3 Casey), 494, 496.

"Manufacturing," as used in the Act of June 29, 1885, providing that all buildings more than two stories in height, used for "manufacturing" purposes, should have at least one fire escape for every fifty persons for which working accommodations were provided above the second story of such buildings should be construed to include the mak-

ing of articles of wearing apparel by using machines driven by electric power. "Manufacture" has been defined as the process of making anything by art, or of reducing materials into form fit for use by hand or by machinery. While the original meaning of the word "manufacture" is to make with the hand, the definition of the term is not confined to this original signification. Manufacturing generally consists in giving new combinations to matter which has already gone through artificial process. *Norris* v. *Commonwealth*, 27 Pa. (3 Casey) 494. Bouvier, in his Law Dictionary, in defining the word "manufacture," says "it includes any new combination in the form of a vendible article, not being machinery."

Landgraf v. *Kuh*, 188 Ill. 484.

3. "A 'manufacturer' is defined to be one who is engaged in the business of working raw materials into wares suitable for use; who gives new shapes, new qualities, new combinations, to matter which has already gone through some artificial process. A manufacturer prepares the original substance for use in different forms. He makes to sell, and stands between the original producer and the dealer and first consumer, depending for his profit on the labor which he bestows on the raw materials."

State v. *Dupre*, 42 La. Ann. 561.

City of New Orleans v. *La Blanc*, 34 La. Ann. 596, 597.

City of New Orleans v. *Ernst*, 35 La. Ann. 746, 747.

State v. *American Sugar Refining Co.*, 108 La. 603.

"Whoever creates a useful thing by mechanical labor is entitled usually to be called a 'manufacturer.' The fact that he purchases, rather than makes, some of the parts, does not destroy that character. A boiler-maker

is a manufacturer, although he purchases the boiler plates rolled into form, and purchases also the tubes and rivets. So with a cabinet-maker, who buys the wood he uses in polished form or carved, and buys the cloth, hair, and leather he uses. No manufacturer of the finished product in this age works up the raw material. The practical manufacturer assembles the material he needs from all quarters in its most finished condition, and does the rest himself."

People v. *Morgan*, 63 N. Y. Supp. 76, 79.

We will now submit some illustrations.

(*a*) "Manufacture" is sufficiently broad to include the manufacture of bone dust and bone black, produced by exposing the burning bone to the action of fire, or by grinding the pieces of bone. Among the definitions given by Webster are the operation of reducing raw material of any kind into a form suitable for use, by hand, by art, or by machinery; to work raw materials of any kind into suitable forms for use. Worcester has the same definitions in substance. Bone dust and bone black, with the proper definitions, are found in both Webster and Worcester, and in other modern dictionaries. Whether we look to the popular use of the term "manufacture," or to its definition given by our best lexicographers, as the proper guide to the intention of the act of Congress in levying an internal revenue tax on manufacturers, persons making bone dust and bone black were properly taxed as engaged in manufacture.

Schriefer v. *Wood*, 21 Fed. Cas. 737.

(*b*) The reduction of coke from coal is a process of manufacture.

Commonwealth v. *Juniata Coke Co.* 157 Pa. 507.

(*c*) The generating of electricity is "manufacturing," within the manufacturing and mining companies' act.

Burke v. *Mead*, 64 N. E. 880, 883; 159 Ind. 252.
People v. *Wemple*, 129 N. Y. 543.

(*d*) A corporation making fountain pens is a manufacturing corporation, and exempt from taxation on its capital stock, under a statute exempting manufacturing corporations, though it purchases from different sources the rubber holders and gold pens which it manufactures into fountain pens.

People v. *Morgan*, 63 N. Y. Supp. 76, 79.

(*e*) The making of gas is a manufacture.

Nassau Gas Co. v. *Brooklyn*, 89 *N. Y.* 409.

(*f*) The term "manufactured article" includes anything which is changed by process of manufacture from its natural form. It is not necessary, in order to constitute a manufactured article, that a chemical change should be wrought in it. Hence the term includes iron manufactured from iron ore; timber and lumber manufactured from logs; bone dust produced by the grinding of bones; staves, etc., manufactured from logs; and ice formed by natural process, but changed by manual labor or machinery to a form adapted for sale and use.

Attorney-General v. *Lorman*, 59 Mich. 157; 60 Am. Rep. 287.

(*g*) "Manufacturing," as used in the Constitution, exempting from taxation property used in manufactures, includes a process by which, through the use of suitable machinery in vaporizing moisture, disposing of gases, and separating grease or oils of garbage from the other materials, so as to produce oleaginous products and fertilizers,

though the process might technically be defined to be a work of conversion or reduction.

Southern Chemical and Fertilizing Co. v. *Board of Assessors*, 48 La. Ann. 1475.

(*h*) "To manufacture" means to make anything by hand or artificial device, so that the making of corn into meal is manufacturing.

Louisville & N. R. Co. v. *Fulgham*, 91 Ala. 555.

(*i*) A pork packer is a manufacturer, because he buys and slaughters hogs, subjects their carcasses to certain processes and combinations with other materials, requiring the application of skill, labor and capital, and converts them into lard and cured meats, for the purpose of adding to the value thereof, with the view of making gain or profit. He uses other raw materials, as well as chemicals, tools, implements and mechanical devices, smokes the meat, wraps it in canvas and then dips it in a mixture to render it airtight and proof against atmospheric influences and insects.

Engle v. *Sohn*, 41 Ohio St. 691.

(*j*) Within the term "manufacturing," there is no question but that chewing and smoking tobacco and snuff are manufactured products. The manufacturer of raw materials converts the raw material—leaf tobacco—into a manufactured article, by removing stems and dirt, improving the color, drying or moistening, perhaps sweetening some kinds, and compressing, granulating, fine-cutting, or pulverizing, according to the use for which it is intended. The parallel with sugar refining is complete. The process of manufacturing tobacco accomplishes the same result as the refining of sugar, though it is more simple and requires less machinery, and the raw material never loses

its original identity. Hence the refining of suger is a manufacture.

State v. *American Sugar Refining Co.*, 108 La. 603.

(*k*) The business of refining sugar is a manufacture, and not an operation of commerce, and therefore not within the commerce clause of the Federal Constitution.

United States v. *E. C. Knight Co.*, 156 U. S. 1.

(*l*) The making of linseed cake is a manufacture, *Campbell* v. *United States*, 107 U. S. 407, although it is made only by pressure on the meal after the oil has been expressed from the seed. *Ency. Brit.*

Finding III clearly falls within the definitions announced by the lexicographers and approved by the courts, and within the rules of law laid down in the cases above cited. The corks were changed or modified, in substance, if not in form, by the art and industry of the petitioner, with the view of rendering them capable of furnishing perfect means, when inserted in bottles, of carrying beer securely, safely and properly from appellant's brewery to foreign countries. Appellant applied to them art, science, and labor for the purpose of bringing about changes or modifications in the cork, as it was cut in Spain and brought from that country to this. Appellant used hand labor, both skilled and unskilled, machinery, and a chemical bath, made and applied according to a secret formula, after having pasteurized the corks and otherwise freed them of impurities.

In due course, and after further pasteurizing, the corks were inserted in beer bottles already filled with beer made for the export trade. The bottles so filled and corked were then inserted in a huge vat and heated to such degree as would destroy the yeast yet remaining in the beer, as

well as noxious germs. The use of the corks so prepared by appellant in the bottles prevented the carbonic acid gas and the beer from escaping and preserved the beer, so that it would be palatable and marketable in foreign countries.

All this involved labor, machinery, chemical processes and intelligent effort and management of a high degree. Here was a perfect combination of the raw material of the corks, labor, skilled and unskilled, machinery, chemicals and chemical action, and the result was the product of art, labor and skill. The corks yet retained the form of cork, but they had taken on other materials and qualities, and had acquired a fitness for uses to which, in their usual state, they were not fitted or adapted. The corks went through successive stages or processes of manufacture, each complete in itself, but the several stages or processes were required to make the final product. The original corks were thus given new qualities, by the possession of which the beer made by appellant when corked by them could be sent to foreign countries without loss, without injury to it or to the consumer, and therefore without detriment to its market.

By means of the process described in the third finding, new combinations were given to the cork, the alcohol, the glycerine and the steam, and the result was corks perfect for use in the necks of bottles, and so free of germs, impurities and tannin that the beer enclosed in the bottles could come in contact with the corks without injury to them or to it. Among other things, the tannin was removed from the corks, an important consideration, for the reason that tannin is injurious to beer.

Tannin is a term applied to various forms of the astringent principle used in tanning. Most of those forms have an acid reaction and resemble each other in properties,

though they differ in chemical composition. (*Webster; Ency. Brit.*)

Tannic acid, which is evidently the form of tannin spoken of in the request, is a solid, crystalline, colorless, inodorous acid, of a very astringent taste, soluble in water, and forming, with peroxide of iron, a compound which is the basis of common ink. *Ibid.*

Tanning is the act or process of converting hides into leather, by cleansing them of hair, flesh, etc., and saturating them with tannin, or some form of the astringent principle contained in the bark of certain trees and plants. *Ib.*

As the cork contains this tannic principle, or acid, which is soluble in water, it is evident, even to one not particularly familiar with the making and storing of beer, that it is of importance that it should be either removed from the cork, or so thoroughly covered as to prevent the beer from reaching and dissolving it, as it would completely do in the course of the six or eight months which must elapse between the corking of the beer in the brewery and its consumption in foreign countries.

Of the pasteurizing of the corks and the beer, and the destruction of noxious germs, it is needless to speak at length in this enlightened time, when it is known in even the humblest family that many forms of disease and death may be avoided by the use of the discovery which has made Pasteur immortal and has wrought great good for mankind.

Bone dust is a manufacture, and yet it is produced only by exposing the bone to the chemical action of fire and then grinding.

Coke is a manufacture from coal by burning it for a time in vessels or ovens, to which air is admitted partially, followed by steam to prevent complete combustion. This result is obtained by labor, skill, and by chemical action.

It is a manufacture also, through the use of suitable machinery, in vaporizing moisture, disposing of gases, separating grease or oils from garbage or other materials, to produce oily products and fertilizers. In that form we have the use of machinery, chemical action, steam, labor, and skill.

In the packing of pork there is the use of raw material, labor, skilled and unskilled, tools and mechanical devices, smoke and the mixture and application of chemicals, to render the product air-tight and proof against atmospheric influences.

In the manufacture of chewing and smoking tobacco and snuff, the stems and dirt are removed from the leaf, the color is made by drying or moistening, to which is added compressing, granulating, fine-cutting or pulverizing and sweetening or flavoring sometimes. All this involves labor, skilled and unskilled, and the use of machinery and chemicals.

In the refining of sugar the raw material is taken and put through machinery and certain chemical agencies by the aid of labor, skilled and unskilled.

These instances of art and manufacture are taken from the cases already cited, and we apply to them, and to the general rules heretofore stated, the unchallenged facts set forth in the findings, and then we submit that the things done to, by and with the corks were a manufacture of corks within the acts of Congress; that the corks were imported materials used in the manufacture of articles in the United States, on which duties had been paid, and then were exported to foreign countries; and that the appellant is a manufacturer and exporter within those acts of Congress and is entitled to a refund of the duties so paid.

IX.

Opinion Court of Claims.

The opinion of the court below, Rec. 11–15, relies upon certain cases which we will consider briefly.

The *Tidewater Oil case*, 171 U. S., 210. There the sides, tops and bottoms of boxes were made abroad, imported here in bales and then assembled into boxes. This court held that the boxes were substantially manufactured abroad and that nothing was done in the United States but assemble the parts together.

In *Hartranft* v. *Weigmann*, 121 U. S., 609, the shells were cleaned by acid and then ground on an emery wheel, some of them being etched by acid afterwards, and all were intended to be sold for *ornaments as shells*. The characteristics of the shells were not changed nor did they take on other materials or qualities. The Supreme Court held—and very properly, as we think—that such cleaning grinding and etching were not "manufactures of shells" under the statute.

We are not seeking recovery here on the theory that these corks were cleaned, ground or polished so as to make them shine and were then etched so as to represent a beer stein, or anything else, or to make them ornaments as corks. They were for plebian uses only, and were so made over in this country as to fit them for the uses described in the findings.

United States v. *Allen*, 163 U. S. 499, does no more than hold that the right of drawback under one act was taken away by another act. There is no such question here.

In the *Swan & Finch Co. case*, 190 U. S. 143, it was held that, in case of doubt as to the time interpretation of the

statute, it must be resolved in favor of the government. We are not rash enough to gainsay that proposition but we do not see that it applies to the case at bar.

The case of the *Schlitz Brewing Co.*, 181 U. S. 584, does not present the questions of fact and law involved in the case at bar. In that case the corks were not manufactured, but the claimant exported bottled beer, using hops, barley, bottles and corks on which duties had been paid. The Treasury Department refused a drawback on the bottles and corks. There the bottles were sent to the corking machines and corked, a thin metal cap was placed over the cork for its protection, and a wire was attached to the neck of the bottle and wound over the cork. Then the bottles were put through the pasteurizing process, "for the purpose of destroying living yeast cells," that process being necessary for beer bottled for export. 35 C. Cls. 115, finding IX. *The corks were not put through any process of manufacture whatever.*

This court held that the bottles and corks were not imported materials, but were finished products and usable for any liquor which the importer might choose to put in them.

The two cases are as dissimilar on the facts as cases can be; in one there was no manufacture but in the other there was manufacture.

We submit that the cases cited in the opinion of the Court of Claims do not sustain the conclusion reached by the court.

X.

Other Cases Considered.

In the court below, counsel for the government cited some other cases that we shall consider now on the assumption that they will be relied on here.

In the *Wheeler case*, 75 Fed. Rep., 654, it was held that imported bottles and corks, re-exported filled with beer made in this country, are not materials, etc. An examination of that case will show that there was no manufacture of corks at all by the exporter. Nothing at all was done to the corks but putting them in the bottles.

In *Frazee* v. *Moffit*, 20 Blatch., 267, it was held that hay pressed in bales ready for market was not a manufactured article, though labor had been expended in cutting and drying the grass and baling the hay. We are not asking the drawback here on the theory that our client had anything to do with taking the bark from the tree, or cutting it into such shapes as would fit it for subsequent manufacture, or baling or boxing those pieces so they could be shipped to this country.

In *United States* v. *Potts*, 5 Cranch, 284, it was held that round copper plates, turned up and raised at the edges from four to five inches by the application of labor to fit them for *subsequent use* in the *manufacture* of copper vessels, etc., were not manufactured copper, and Mr. Chief Justice Marshall, speaking for the Court, said: "From the facts stated, the copper in question cannot be deemed manufactured copper within the intention of the legislature." We think no one would challenge that proposition.

In 23 Opinions, 625, it was held that an importer was not entitled to a refund of duties paid on an automobile imported for use in the construction of an express wagon, upon the re-exportation of the completed wagon, such wagon not being a manufacture within the meaning of the statute. We may assent to the soundness of that view without in the least impinging upon the doctrine contended for by the appellant in this case. There is not the

slightest analogy between that case and the case at bar, either in fact or in principle.

These authorities are not in point, as we think.

We submit that the judgment of the court below should be reversed, and that court should be directed to enter judgment in behalf of appellant for $10,995.00.

W. W. DUDLEY,
L. T. MICHENER,
Attorneys for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THE ANHEUSER-BUSCH BREWING ASSOCIATION, Appellant,
v.
THE UNITED STATES. } No. 60.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The appellant association imported from Spain large quantities of corks for use in bottling export beer. The corks were used for this purpose and the bottled beer was exported by the appellant association. This suit was brought in the Court of Claims under the provisions of section 25 of the act of Congress entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1900 (26 Stat., 617), to secure a drawback equal in amount to the duties paid on the corks so imported, less one per centum of such duties. The facts are fully set forth in Findings III and IV

of the Court of Claims (R., pp. 8 to 11). The case was tried in the Court of Claims, and on May 7, 1906, the court entered judgment dismissing the petition of claimant. From that judgment the claimant association prosecutes this appeal.

ARGUMENT

It is contended on behalf of the United States that the judgment of the Court of Claims should be sustained for two reasons:

First. The corks in question were not a part or ingredient of the beer exported, and were not, therefore, in contemplation of law, exported at all.

Second. The process of cleansing and preparation adopted and applied by the appellant to the corks in question did not constitute a manufacture of corks within the purview of the statute providing for a rebate or drawback on exported manufactured articles.

I.

In the case of the Schlitz Brewing Company (181 U. S., 584) the claimant relied upon the proposition that the imported corks and bottles which contained the beer exported by it form, together with the beer, one product, which was an exported article. This court, holding against this proposition, said:

> The bottles and corks are not imported materials at all, but finished products, and usable for any liquor which the importer may choose to put in them. Neither are they ingredients used in the manufacture of exported or any other kind of beer, in any proper sense of the

> term, but simply the packages which the manufacturer, for the purposes of export, sees fit, and perhaps is required, to make use of for the proper preservation of his product. Bottled beer is still beer, made of the same ingredients as ordinary beer, though made with greater care, and to speak of the bottles and corks as ingredients of the beer is simply an abuse of language.

The opinion then goes on to say that the process of steaming the beer does not convert a bottle from an encasement into an ingredient, and gives uses or illustrations of similar instances—bottled champagne and effervescent waters and certain canned fruits and vegetables. The force of this decision is to establish not only that the corks in exported bottled beer are not an ingredient in any sense of the beer, but also that the article which is exported is the beer. It follows, then, that the corks are not exported at all, for if not exported as a part of the beer, how can it be contended that they form a separate exportation.

There can be no exportation, within the meaning of the statute providing for a rebate or drawback, without a sale of the article exported in a foreign country. The corks used by the appellant to cork its bottles of exported beer were not sold. It was the beer that was sold, and the corks have no relation to the transaction, except as above stated in the Schlitz case, to form a part of the encasement of the beer. (*Wheeler* v. *The United States*, 75 Fed. Rep., 654.) This contention receives special emphasis from the fact that the appellant alleges in its petition that

the corks, after being treated and used as therein described in the export of bottled beer, are rendered useless for any other purpose. (R., p. 3.) The Treasury Department in its rulings on this question has held that section 25, in giving a drawback does not apply to corks, bottles, or tin foil, imported and used for bottling purposes in this country and subsequently exported, but that it has reference exclusively to the ingredients out of which an exported article is manufactured or produced.

See the following decisions of the Treasury Department:

No. 10301, October 28, 1890, synopsis of decisions for 1890, p. 447;

No. 13851, March 24, 1893, synopsis of decisions for 1893, p. 257;

No. 13921, April 15, 1893, synopsis of decisions for 1895, p. 328.

In the case of *The United States* v. *Allen* (163 U. S., 499), Mr. Justice White, touching upon the meaning of the word "materials," as used in section 25, said:

> An added circumstance weighing against the construction that the proviso was intended to continue the drawback in question is the fact that the rule laid down in the proviso for determining the amount of drawback evidently had relation to articles manufactured from "materials," and not to a raw material like coal, in the production of which no materials are used which enter into and form a part of the product.

This language clearly holds that the section relates to the materials from which the articles of exportation are manufactured or produced, and not to the coverings or packages. In other words, in the case at bar the material exported was beer and not corks and bottles. The encasement of the material exported does not, within the meaning of the statute, form any part of the export.

II.

It appears from the findings of fact that the corks in question were imported from Spain, cut in proper sizes for the use to which appellant intended to apply them, and that all that claimant did was to wash and cleanse the corks and by the use of certain chemical applications render them impervious. This we contend does not constitute a manufacture of the corks. If the article remains in the same form, bearing the same commercial name and applied to the same use for which it was originally designed, it can not be said to have undergone a process of manufacture. The cases cited by appellant in its brief are not in point, for the reason that in each case the article was entirely changed and came out designed for a different use than the original material from which the manufactured product was made. But here the corks were manufactured in Spain from the raw material into the shape and form of the completed article. All that was done by the cleansing process was to apply the finishing touches. While these finishing touches

may have been necessary to properly prepare the corks for the use of the appellant, it was merely the taking of a manufactured product intended for general use and by a special treatment preparing it for that same use in a manner to suit the convenience and purpose of the claimant. It might, with the same propriety, be contended that if A import a buggy and it is not painted in a style to suit his taste, by painting the buggy a different color with paint of a particular quality prepared specially for his own use, he has thereby manufactured a buggy.

I need not burden the court with illustrations. This matter has been so conclusively settled by adjudicated cases that it is unnecessary to more than call the attention of the court to a few decisions. The privilege granted importers of securing a rebate upon exported manufactured articles that have been manufactured from the imported material is a governmental grant of a privilege or benefit which is to be construed in favor of the Government and against the party claiming the grant. (*Swan and Finch Company* v. *The United States*, 190 U. S., 143.)

In *Hartranft* v. *Weigmann* (121 U. S., 609) it was sought to recover the duty paid on imported shells, and the question to be determined was whether "cleaning off the outer layer of the shell by acid and then grinding off the second layer by an emery wheel, so as to expose the brilliant inner layer, is a manufacture of the shell." Though it appeared that some of the shells were afterwards etched by acids

so as to produce inscriptions upon them and that the shells were to be sold for ornaments, yet the court held that they were not manufactured. We quote from the opinion as follows:

> They were still shells. They had not been manufactured into a new and different article, having a distinctive name, character, or use from that of a shell. The application of labor to an article, either by hand or by mechanism, does not make the article necessarily a manufactured article, within the meaning of that term as used in the tariff laws. Washing and scouring wool does not make the resulting wool a manufacture of wool. Cleaning and ginning cotton does not make the resulting cotton a manufacture of cotton.

In *Frazee* v. *Moffitt* (20 Blatchford, 267) it was held "that hay pressed in bales ready for market was not a manufactured article, though labor had been bestowed in cutting and drying the grass and baling the hay."

In *United States* v. *Potts* (5th Cranch, 284) it was held that "round copper plates turned up and raised at the edges from four to five inches by the application of labor to fit them for subsequent use in the manufacture of copper vessels, but which were still bought by the pound as copper for use in making copper vessels, were held not to be manufactured copper."

In the Twenty-third Opinions of Attorneys-General, 625, it was held that where an importer imported an automobile for the purpose of reconstructing it into an express wagon, and exported the completed ex-

press wagon, he is not entitled to a refund of the duties paid on the automobile.

In *Tidewater Oil Company* v. *The United States* (171 U. S., 210), where the sides, tops, and bottoms of boxes were imported in bales and constructed into boxes in this country it was held that the boxes were substantially manufactured abroad, but the parts were assembled together in this country.

It is unnecessary to further tax the patience of this court by citation of authorities or by prolonging the argument. It is respectfully submitted that the judgment of the Court of Claims should be affirmed, with directions to dismiss the petition.

J. A. VAN ORSDEL,
Assistant Attorney-General.

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